VERMONT

PUBLIC SERVICE DEPARTMENT

Annual Report on the Public Advocacy of the Vermont Department of Public Service Pursuant to Act 130, Section 5f –

A Report to the Vermont House Committee on Energy and Technology, the House Committee on Commerce and Economic Development, the Senate Committee on Finance, and the Senate Committee on Natural Resources

DRAFT REPORT November 2017

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Introduction

Act 130 of 2016 requires the Department of Public Service ("Department" or "DPS") to annually submit to the General Assembly a report regarding the activities of its Public Advocacy Division. This is the second annual report submitted by the Department. Specifically, Act 130 requires the report to address:

- A summary of significant cases concluded within the past year;
- The positions taken by the Department in those cases;
- A summary of the Department's role and positions with respect to other significant topics addressed by the Department's Public Advocacy Division pursuant to alternative regulation or to litigation before the Public Utility Commission[1]("PUC" or "Commission") or other tribunal;
- Specific references to the Department's duties and responsibilities under Title 30, and an explanation of how the Department's positions and activities align with those statutory provisions; and
- The terms of any settlement or memorandum of understanding ("MOU") negotiated by the Department in such cases, the parties that participated in any settlement or MOU negotiations, and documentation of what the Department was able to negotiate on behalf of residential ratepayers and what the Department conceded that was beneficial to the applicable public service company.

Act 130 further provides that: "The primary purpose of the reporting requirement of this section is to help address concerns regarding any potential compromise of the effectiveness or independence of the Department's representation of ratepayers in rate proceedings, including base rate filings under an alternative regulation plan."[2] Concerns regarding the transparency of, and benefit to, ratepayers resulting from alternative regulation have been much of the focus of the Department this past year. In April of 2017 the Department initiated a proceeding before the PUC to examine various - and potentially more effective - models of alternative regulation. Another goal of the Department was to bring together stakeholders to explore ways in which the

[1] Pursuant to Section 9 of Act 53 of the 2017 legislative session, the Vermont Public Service Board's name was changed to the Vermont Public Utility Commission, effective July 1, 2017. For clarity, activities of the Vermont Public Service Board that occurred before the name change will be referred to in this document as activities of the Commission unless that would be confusing in the specific context.
[2] Act 130 of 2016, Section 5f (b).

process could be made more transparent and "user friendly" to non-lawyers and non-experts who wish to participate in such proceedings.

Finally, Act 130 requires that: "[t]he Attorney General shall monitor and detail at least one rate proceeding annually and make findings and recommendations related to the effectiveness and independence of the Department's ratepayer advocacy." This year, the Attorney General will monitor the upcoming Washington Electric Cooperative rate case, which we expect will be filed in mid-November.

Department's Duties under Title 30

Act 130 established a new protocol for the Department's handling of complaints concerning the alleged failure of a company to comply with the terms and conditions of a certificate of public good issued by the PUC under 30 V.S.A. 248 or 248a.[3] This process is the subject of a separate annual report to the General Assembly and is not included here. Otherwise the Department's duties remain unchanged and are described below largely in the wording of last year's report.

General Provisions

The statutes directing the Department's work are found in Title 30. Section 2(a) directs the Department to "supervise and direct the execution of all laws" relating to public service entities. Section 2(a)(6) directs the Department to represent "the interests of the consuming public in proceedings to change rate[s] ...." Section 2(b) broadens that focus, stating that "In cases requiring hearings by the PUC, the Department, through the Director for Public Advocacy, shall represent the interests of the people of the State, unless otherwise specified by law."

The duties of the Department fall into two broad categories – planning and regulating. Regarding the planning functions, the Department prepares and issues long range plans that guide the evolution of energy and telecommunications industries in Vermont. The regulatory functions of the Department include representing the public interest (as developed in the various plans) as a party in virtually all cases before the PUC.

Generally speaking, in its regulatory functions, the Department participates in cases where a party petitions the PUC to construct an energy or telecommunications facility, and in cases involving rates charged and services rendered by regulated service providers. The cases

[3] Act 130 of 2016, Section 5c.

involving construction of energy facilities are reviewed under Title 30, Section 248, with the applicant seeking a CPG to build a facility. Rate cases, service quality cases, and other cases are generally brought by a utility wishing to increase its rates, change its services, or undertake another action for which PUC approval is required. Additionally, with respect to any matter within the jurisdiction of the PUC, the Department may initiate proceedings on its own motion. The Department may also initiate rule-making proceedings before the PUC.

Significant Matters of the Past Year

This past year, the Department participated in the review of approximately 300 matters taken before the PUC. From these, the Department identified the following matters for purposes of completing this report:

1. **Case No. 17-3142-PET – Vermont Department of Public Service Request for Workshop on Utility Rate Regulation**
2. **Case No. 17-3232-PET – Green Mountain Power Temporary Limited Regulation Plan**
3. **Case No. 8710-Vermont Gas Rate Case**
4. **Case No. 17-1238-INV – Vermont Gas Traditional Rate Case**
5. **Case No. 8881-FairPoint/Consolidated Communications Merger**
6. **Case No. 8301 – Comcast CPG Renewal**
7. **Case No. 8601 – Verizon §248a Petition to Construct a New Wireless Telecommunications Facility in Waterbury**
8. **Public Utility Commission Rule 5.100 – Net-metering Rule Change**
9. **CPG #16-0069 – NMP Stowe Cady Hill Solar, LLC – 496 kW Solar Group Net-Metered Facility in Stowe**

Case Summaries and Positions Taken

1. **Case No. 17-3142-PET – Vermont Department of Public Service Request for Workshop on Utility Rate Regulation**

On April 10, 2017, the Department requested that the Commission undertake a workshop process to broadly review emerging trends in the utility sector and to re-evaluate existing forms of regulation in light of these trends. On June 26, 2017, the Commission opened the investigation under Case No. 17-3142-PET.

Through this investigation, the Department hopes to achieve meaningful progress toward transformation of the power sector, and to also address the inherent challenges associated with regulation and cost recovery of natural gas service. It is increasingly apparent that the power sector is undergoing fundamental change, starting with an industry that was and remains primarily a central station, central delivery system, to a distributed, intelligent, and dynamic system with many active participants, including customers. The changes are enabled by technology transformation, but hold promise for lower cost, cleaner, more reliable, and higher power quality service going forward. Within the framework of regulatory oversight, features of the system that are implicated include grid modernization and capital investment, rate design, power system planning, and the form of regulation. The Department's petition and the Commission's investigation are fundamentally designed to address the first pillar in longer term reforms that will be needed for the legal and regulatory framework that applies.
In initiating this proceeding, the Department offered a set of principles and touchstones for meaningful reform. A preliminary set of touchstones for the next alternative regulation plan to be implemented has been advanced by the Department and includes the following:

- Transparency of the proceedings;
- Periodic formal review of cost-of-service;
- Incentives for cost management in operations;
- Incentives for cost management of capital budgets;
- Incentives for cost management of power supply;
- Well-formed objectives for performance;
- Decoupling;
- Incentives for alignment of consumer and public interest with management; and
- Outreach and communication with customers.

To date, the Commission has held three workshops. At each of the workshops the Department has advocated for the Commission to keep the focus of this proceeding, or at least the first phase, on the issue of non-traditional regulation. (Rate design is another issue that is a potential topic in a subsequent phase.) The second workshop provided an opportunity to learn from national and international experts on non-traditional regulation. At the third workshop, the Department articulated a high level vision for non-traditional regulation that bears many of the features of non-traditional regulation that have been advanced in the UK, Canada and the US.

The next phase of the process is for the Commission to respond to the parties with a proposed framework based on a staff proposal. The Department intends to provide additional assistance to the Commission staff through the submission of a straw proposal for the Commission to consider.

Over the course of the next six months, the Department hopes to complete work that frames future regulation. Subsequent phases of the Department's efforts will attempt to advance other pillars of regulation that require adaptation and reform, including rate design, fundamental changes to the framework for long range planning, and increasing reliance on customers and new business models that will help to accelerate adoption of new technologies by utilities and their customers to achieve the objectives of more affordable and reliable power generation that meets the legislative objectives for energy and the environment.

2. **Case No. 17-3232-PET – GMP Temporary Limited Regulation Plan**

On June 2, 2017, Green Mountain Power Corporation ("GMP") filed a petition with the PUC for approval of a temporary limited regulation plan (the "Plan") pursuant to 30 V.S.A. §§ 209, 218, and 218d. GMP's proposed Plan included several components that have been included in prior GMP alternative regulation plans, including a Power-Adjustor, Power Supply and Volume Refresh Adjustment, Exogenous Change Adjustment, a merger savings and innovative pilot program. The purpose of the Plan is to allow for GMP to recover through its rates costs that are generally considered to be beyond the control of GMP's management and equitably share the risk of unanticipated events with GMP ratepayers. For example, the power-adjustor is a commonly used regulatory mechanism that enables GMP to account for any significant cost increases or decreases in the energy marketplace. The exogenous change adjustment enables GMP to include costs from unexpected significant events in rates, such as costs from large storm recovery or changes in law or regulation. Notably, GMP's proposed Plan eliminated some components of prior alternative regulation plans, including an earnings sharing adjustment mechanism and a process for reviewing base rates on an annual basis. Instead, GMP's petition indicated that it intends to seek a limited alternative regulation Plan that will remain in place until the PUC develops a new framework for future alternative regulation plans in Vermont. GMP is currently undergoing a traditional cost-of-service ratemaking in Case No. 17-3112-INV, and the Plan will operate in conjunction with rates established through that full rate case. GMP also plans to file a full cost-of-service traditional rate case in 2018. GMP initially proposed that the Plan would last for two years (the 2018 and 2019 rate years). Any actual changes to rates triggered by the Plan will not go into effect until January 1, 2020.

Renewable Energy Vermont ("REV"), the Vermont Energy Investment Corporation ("VEIC") and GlobalFoundries intervened in the case. None of the intervenors challenged the substance of GMP's proposed Plan. Instead, REV challenged some portions of GMP's testimony regarding the extent to which net-metering is putting pressure on GMP rates. VEIC did not file any testimony, but requested that GMP be required to consult with Efficiency Vermont to prevent duplication of efforts on efficiency programs. GlobalFoundries filed testimony requesting that it be exempt from the power adjustor and exogenous recovery mechanism. GlobalFoundries has been exempt from these mechanisms in prior alternative regulation plans.

Position of the Department

The Department conditionally supported the Plan. The Department recommended that the Plan be limited to one year with the option for GMP to petition the PUC for approval for a second year. The Department also recommended that the Power Supply and Volume Refresh Adjustment be removed from the Plan. The Department further recommended that GMP be required to move its innovative services programs (such as heat pumps and hot-water heaters) to a tariff if they are to be provided beyond an initial 18 month pilot-trial period. GMP agreed to all of the Department's recommendations on proposed revisions to the Plan. With respect to GlobalFoundries request for exemptions from some components of the Plan, the Department recommended that the PUC withhold making determinations on those requests until GMP files for a full rate-design review, which is expected to occur in 2018 or 2019 (the purpose of a rate design case is to equitably allocate costs of GMP's services amongst rate classes, such as residential and industrial customers).

PUC Order

An evidentiary hearing was held on October 5, 2017, and parties filed final briefs on October 19. No final order has been issued by the PUC and no MOU has been entered into.

3. Case No. 8710 – Vermont Gas Rate Case

On February 17, 2016, Vermont Gas Systems, Inc. ("VGS") filed for a 2% increase in the non-gas portion of its rates, offset by a 10% decrease in the gas charge. (Under VGS's alternative regulation plan gas costs had been adjusted separately due to the variability in wholesale costs. After Docket 8710 was opened, the Commission approved a continuation of the separate treatment of gas costs, and thereafter the docket focused on the proposed increase in non-gas costs.) VGS sought to put the costs of the Addison Natural Gas Project ("ANGP") into rates and to use $13.9 million of the System Expansion and Reliability Fund ("SERF") to smooth the rate impacts associated with recovery of ANGP costs. The SERF was created for just this purpose in Docket 7712. See Docket 7712 Order of 9/28/11. Absent a withdrawal from the SERF, VGS's proposal reflected a 10.31% increase in overall rates. VGS proposed that its Return on Equity ("ROE") be set at 9.7%. AARP and CLF intervened; these parties had actively opposed permitting of the ANGP, and intervened to oppose cost recovery for that Project. VGS's prudence and its management of the ANGP construction were main topics in the case. The cost of the ANGP to be recovered in rates had been capped at $134 million by agreement of VGS and DPS in Docket 7970; the final cost of the Project was forecast to be over $165 million, resulting in a voluntary write-off of $31 million by VGS.

Position of the Department

The Department challenged VGS's rate request on grounds of imprudence, mismanagement of the ANGP, and failure to adequately document costs, as well as recommending a ROE of 9% rather than the 9.7% sought by the company. Commission precedents required specific documentation, including for example invoices and cost-benefit analyses, in order to include capital costs in rates. The DPS's review found VGS's support for such costs significantly lacking. The Department also took issue with the management of the ANGP. That Project suffered from dramatic increases in cost estimates, changes in contractors, poor management of contractors and internal processes, failure to timely obtain rights-of-way, and failure to adequately track costs associated with different parts of the Project. VGS had proceeded to construction with no contracts in place for the two primary construction contractors, and changed contractors in midstream, adding to the Project's costs. The company's own internal costs tripled over the course of the Project. The company was simply unprepared to manage a construction project the size of the ANGP. The Department recommended a significant disallowance, with ultimate rates depending on the PUC's decision regarding use of SERF funds.

<u>MOU between VGS and the Department</u>

Evidentiary hearings were held over four days in early December 2016. On February 2 VGS and the Department filed an MOU resolving all issues between them. The MOU established a 0% increase in non-gas charges, limited the ANGP costs in rates to $134 million, required VGS to remove a number of items from its proposed cost of service, and allowed the use of $5.5 million from the SERF. VGS admitted to imprudent planning and management of the early stages of the ANGP, and as a penalty agreed to a reduction of its ROE to 8.5% - below its requested 9.7% and the Department's recommended 9%. This reduced ROE is to remain in effect for three years. The MOU also spelled out requirements for the timing and content of VGS's next rate filing, including specification of support to be provided for capital additions.

Intervenors AARP and CLF opposed the MOU and requested a hearing on it which was held on March 13, 2017. AARP maintained that no ANGP costs should be allowed into rates, and that the ROE reduction was inadequate as a penalty for VGS's imprudence. AARP also opposed any use of the SERF, arguing that it was an illegal cross-subsidy and should be promptly returned to the customers from whom it was collected.

<u>PUC Order</u>

The PUC issued an order adopting the MOU on April 14, 2017. The PUC found that the MOU resulted in just and reasonable rates, and concluded that VGS's voluntary write-off of $31 million in ANGP costs, together with the ROE reduction, amounted to a reasonable penalty for the company's imprudence.

Appeal

AARP appealed the PUC's April 2017 Order to the Vermont Supreme Court (S. Ct. Docket No. 2017-194), arguing that the PUC's findings were inadequate to support its order, that the SERF is illegal, and that the ROE penalty provides no benefit to ratepayers. The appeal has been fully briefed and is awaiting the scheduling of oral argument.

4. Case No. 17-1238-INV – Vermont Gas Traditional Rate Case

On February 15, 2017, Vermont Gas Systems, Inc. ("VGS") filed a traditional cost-of-service rate case pursuant to 30 V.S.A. §§ 225, 226 and 227, with the PUC requesting a 4% increase in firm non-gas rates to be effective April 2, 2017. VGS also requested permission from the PUC to use $12 million of the System Expansion and Reliability Fund ("SERF") to reduce its cost-of-service. The SERF fund was previously established by the PUC to mitigate rate impact to VGS customers caused by the addition of the Addison Natural Gas Pipeline ("ANGP") by smoothing rate increases associated with the pipeline over an extended period of time. VGS's petition also included an allowed return on equity ("ROE") rate of 8.5%, which is a fixed penalty rate set by the PUC in a prior rate case where the PUC found that VGS has been imprudent in its planning of the ANGP. VGS's initial rate request also reflected its decision to forego $1.15 million of money that it believed could have been otherwise recoverable in rates to limit the overall SERF withdrawal and keep the rate increase at 4%. No parties intervened in the case.

Position of the Department

The Department recommended that the PUC approve a 3.8% increase in firm non-gas rates with a $9.55 million withdrawal from the SERF fund. The Department challenged several significant aspects of VGS's initial filing. First, the Department argued that VGS overstated the amount of earnings recoverable under the earnings sharing adjustment mechanism ("ESAM") from VGS's alternative regulation plan. The Department determined that VGS miscalculated the ESAM by inappropriately including costs from the ANGP. VGS sought $1.05 million as a result of the ESAM, and the Department recommended that the PUC disallow this amount in the entirety. Second, the Department recommended approximately $2.5 million of reductions to VGS's payroll, benefit, and outside services expenses. Third, the Department recommended that most growth-related plant from the ANGP that was not already in-service be removed from rates, resulting in about $.5 million of reductions. Fourth, the Department recommended that the PUC disallow approximately $.4 million in costs associated with a settlement with International Paper over costs incurred for extensions to the ANGP that were never completed.

MOU between VGS and the Department

The PUC held an evidentiary hearing on the case September 7, 2017. The Department and VGS subsequently filed a negotiated memorandum of understanding ("MOU") with the PUC on September 18, 2017. The MOU resolved all remaining issues between the Department and VGS and included a recommendation that the PUC approve a 4% non-gas rate increase and authorize a $10.71 million withdrawal from the SERF. In the MOU, VGS agreed to forgo recovery of its requested $1.05 million ESAM recovery. VGS also agreed to the Department's position requiring the removal of most growth-related plant associated with the ANGP from rate base. VGS further agreed to reduce its payroll, benefit, and outside expenses by approximately $250,000. VGS further agreed to reduce its recovery of costs associated with the ANGP and the International Paper settlement by approximately $200,000. The MOU also required VGS to exclude from rates approximately $76,000 of legal fees associated with ANGP-related litigation. In total, the settlement resulted in VGS reducing its initial rate request by approximately $2.5 million. While the MOU provided for a rate increase of 4%, it imposed a limit on the amount of VGS's overall withdrawals from the SERF fund. Maintaining the SERF balance will allow for additional mitigation of rate increases in future rate cases or a direct return to customers of any funds remaining in the SERF at the end of its life.

PUC Order

The PUC issued an order adopting the MOU on October 26, 2017. The PUC found that the "MOU results in just and reasonable rates and in a SERF withdrawal that appropriately smooths the rate impacts of the ANGP."

5. Case No. 8881 – FairPoint/Consolidated Communications Merger

On December 29, 2016, FairPoint Communications, Inc. ("FairPoint") and Consolidated Communications, Inc. ("Consolidated") filed a petition with the PUC seeking approval of a merger transaction under which Consolidated would acquire FairPoint and all of its operating assets throughout FairPoint's existing service territories in 17 different states. FairPoint is the largest incumbent telephone provider in Vermont, with a service territory that touches most regions of the state. Consolidated is based out of Mattoon, Illinois. Prior to the merger, Consolidated's business was approximately equal in size to FairPoint. The proposed merger was structured as an all-stock transaction, and the various FairPoint legal operating entities would remain intact after the merger and become subsidiaries of Consolidated. The merger would roughly double the size of Consolidated and result in a company that has service territories in 24 different states. The PUC reviewed the proposed merger under various legal requirements outlined in 30 V.S.A. §§ 107, 108, 109, 231(a) and 311, to determine whether the transaction would promote the public good of Vermont.

In support of the merger, Consolidated presented testimony, data, and information to demonstrate that the merger would result in a more financially stable company with better access to capital to make necessary network investments. Consolidated also provided detailed information regarding a series of acquisitions of smaller telecommunications companies that it had acquired over the past fifteen years throughout various states across the nation. Consolidated presented itself as a company with stronger management teams and more modern service offerings than FairPoint, including improved broadband internet access, video subscription services, and home security services.

The International Brotherhood of Electrical Workers Locals 2320, 2326, and 2327, and Communications Workers of America Local 1400 (collectively, the "Labor Intervenors") intervened in the case. The Labor Intervenors did not oppose the proposed merger, but raised concerns with the PUC about potential job losses that could occur as a result of the merger.

<u>Position of the Department</u>

The Department conditionally supported the merger. The Department retained a team of telecommunications finance and network operations experts to assist its review of the proposed merger. The Department's investigation of the transaction included multiple rounds of written discovery requests and a series of interviews with key Consolidated management personnel, some of which were conducted at Consolidated's offices in Mattoon, Illinois. Based on its investigation, the Department determined that a merged company would be more financially stable than FairPoint on a standalone basis. The merged company would have greater access to capital on more favorable terms, improved revenue and cash-flows, and stronger credit ratings than FairPoint on a standalone basis. The Department's financial experts also conducted a series of "stress tests" to evaluate Consolidated's financial assumptions and gauge Consolidated's ability to meet all debt covenant obligations and found that the risk of default is low (while FairPoint currently faces a moderate risk if default if it continues to operate on a standalone basis).

The Department recognized that the transaction carries risk to Vermont ratepayers. FairPoint currently operates in a heavily competitive market under which it retains the obligation to serve as a carrier-of-last resort. FairPoint has suffered a significant loss of business in Vermont since it acquired the Verizon networks in 2007, mostly as a result of expanded penetration of wireless phone service and VoIP phone service provided by cable television and broadband providers. FairPoint has also suffered from widespread service-quality deficiencies and slow repair times. However, the Department's investigation determined that Consolidated plans to introduce improved broadband access throughout much of FairPoint's existing service territory. The Department thoroughly reviewed Consolidated's operations in its existing service territories, which demonstrated that Consolidated generally has better service quality than FairPoint and better systems for deploying its personnel to identify and repair network troubles. The Department believes that expanded service offerings and gradual improvements in service quality should allow Consolidated to better compete with VoIP and competitive broadband providers and staunch the rate of line losses that FairPoint has been experiencing over the past decade. The Department recognized that the combination of pressure from the competitive telecommunications marketplace and FairPoint's obligation to provide service to remote locations throughout the state make it impractical to expect that Consolidated will be able to fully rectify many of the issues that have plagued FairPoint in Vermont in recent years. However, the Department's investigation determined that a merged entity would be more capable of providing reliable telephone service and broadband access to Vermonters than FairPoint on a standalone basis.

MOU between Department, FairPoint, and Consolidated

After the PUC conducted evidentiary hearings, the Department, FairPoint, and Consolidated filed a MOU with the PUC on June 1, 2017. The Labor Intervenors did not join the MOU, but notified the PUC that they did not object to any terms of the MOU. The MOU contained a series of stipulated conditions that were recommended by the Department to protect Vermont ratepayers. Specifically, Consolidated agreed that it would reinvest at least 14% of total Vermont revenues (including revenue from both regulated and unregulated services) back into the Vermont network for a period of three years post-merger. Consolidated further agreed to invest at least $1 million per year for three years post-merger to target network improvements in areas that suffer from recurring service quality problems. These investments reflect an increase over the amounts that FairPoint had been investing and expected to invest over the same period. Consolidated further agreed to continue provide Universal Service Funding and Lifeline access to Vermont customers. The MOU also contained a series of regulatory filings that Consolidated must make over the two years post-merger to document any network system conversions, changes to staffing levels, or modifications to its wholesale service offerings to competitive providers. Consolidated also agreed to meet with Department staff on a quarterly basis (or as needed) for two years post-merger to discuss the transition and address any regulatory issues that arise.

PUC Order

The PUC issued an order approving the merger and adopting the conditions from the MOU on June 26, 2017. The merger was closed in early July, and the FairPoint companies are now fully owned subsidiaries of Consolidated. Consolidated has advised the Department that the Vermont network will likely continue to operate under the FairPoint trade name until some point in 2018 when Consolidated will rebrand the company.

6. Case No. 8301 – Comcast CPG Renewal

This case involved a petition from Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC, d/b/a ("Comcast") to renew its Certificate of Public Good ("CPG") to provide cable television in Vermont. Pursuant to 30 V.S.A. § 502, the PUC has exclusive jurisdiction as the franchising authority for cable television operators throughout Vermont. Under 30 V.S.A. § 504, cable franchise CPGs have a set period of eleven years. Comcast's prior CPG was set to expire on December 31, 2016, and Comcast filed a petition to renew its CPG on September 23, 2015. Comcast's petition requested that the PUC renew Comcast's CPG for an additional eleven year period.

The PUC's review of a cable television CPG petition is governed by criteria set out in the Federal Communications Act (47 U.S.C. § 546); 30 V.S.A. §§ 504(b)–(c) 506; and PUC Rules 8.214 and 8.230. These sources of law require that the PUC make findings of fact on criteria relating to various technical, financial, and consumer protection requirements prior to issuing a renewed CPG. The PUC is also required to find that a cable operator will comply with requirements related to public, education, and government ("PEG") channel access and that the cable operator will satisfy the general requirement of promoting community needs throughout its service territory in Vermont.

PEG channels throughout most of Comcast's service territory in Vermont are operated by local entities known as Access Management Organizations ("AMOs"). The AMOs are funded directly by pass-through costs to consumers that appear as a "PEG fee" line item on Comcast customer bills. A group called the Vermont Access Network ("VAN"), which consists of members from AMOs located throughout Vermont, intervened in this case on behalf of the individual AMOs to present testimony and evidence in support of various proposed CPG conditions that it recommended related to PEG programming and community needs. Of significant note, VAN requested that the PUC require that Comcast include program content information for PEG channels in its interactive program guide ("IPG"), make PEG channels available in high-definition ("HD") format, set clear requirements for remote access sites (to allow live broadcast of community events on PEG channels), and require that Comcast install an institutional network ("iNet") to provide interconnection among AMOs to better facilitate information exchange. Comcast strongly opposed the conditions from VAN on the basis that were economically unfeasible, technologically impractical, or that federal law preempted the PUC from imposing such conditions.

<u>Position of the Department</u>

The Department conditionally supported Comcast's petition. Specifically, the Department recommended that the PUC condition approval of the petition on a requirement that Comcast construct 550 miles of new line extensions into unserved areas of Comcast's service territory over the term of the CPG. The Department also provided partial support for some of the conditions recommended by VAN. With respect to the proposed IPG requirement, Comcast argued that it would have been necessary to make approximately $3 million of upgrades to its existing headend facilities to allow for detailed program information for PEG channels to be listed on the IPG.[4] Comcast also argued that it could pass those costs directly to consumers in the form of increased line-item PEG fees on customers' bills. Based on its own investigation, the Department determined that Comcast was correct that costly upgrades to headend facilities would be necessary to comply with VAN's proposed condition. The Department also determined that Comcast could lawfully recover the costs of these upgrades with increased line-item fees to customers or by offsetting the cost of the upgrades with reductions to the operating funds distributed to the AMOs. The Department believed that neither of these results promoted the public good, and therefore recommended an alternate CPG condition for PEG access to the IPG that did not require headend facility upgrades. The Department's proposed condition would have required that Comcast make the IPG available for PEG channels where there is no direct channel conflict amongst AMOs served by the same headend facility. This condition would have provided immediate relief for only a small percentage of the AMOs and PEG channels in Comcast's service territory; but it would have avoided burdensome fees or significant AMO budget cuts. It also could have encouraged creative collaboration between AMOs to share limited available channel capacity. With respect to remote origination, the Department proposed a condition that was identical to a CPG condition contained in Charter's recently issued cable CPG, which would have required that Comcast allow for an internet-based distribution in community buildings where it would be too expensive to install a direct access line.

PUC Order

The PUC issued a final order and a renewed CPG to Comcast on January 1, 2017. The PUC adopted the Department's recommendation that Comcast be required to construct 550 miles

[4] Comcast has numerous headend facilities throughout Vermont, most of which cover the service territory of multiple AMOs. The AMOs are typically assigned the same channel numbers for PEG channels in their respective territories. For example, channel 15 can be used for different PEG channels in neighboring communities served by the same headend. The IPG itself can only be programmed at the headend level, and Comcast would need to create "virtual head-ends" to allow for IPG access where multiple AMOs are served by the same head-end.

of line extensions over the life of the CPG. With respect to PEG issues, the PUC adopted VAN's proposed condition regarding PEG access to the IPG and the Department's proposed condition on remote origination sites. The PUC also included a condition that adopted VAN's requests for an iNet. On February 13, 2017, Comcast filed a motion requesting that the PUC alter or amend the CPG and remove the line extension requirement and the PEG-related conditions. On July 27, 2017, the PUC denied Comcast's motion to amend or alter. On August 28, Comcast filed a federal lawsuit against the PUC and the individual PUC members who participated in the decision that appeals several conditions from the CPG and raises various constitutional claims against the state. Comcast argues that several of the conditions in the renewed CPG violate federal law. That lawsuit is currently pending before the United States District Court for the District of Vermont.

7. Case No. 8601 – Verizon § 248a Petition to Construct a New Wireless Telecommunications Facility in Waterbury

On September 14, 2015, Vermont RSA Limited Partnership and Cellco Partnership, each d/b/a Verizon Wireless ("Verizon"), filed a petition pursuant to 30 V.S.A. § 248a with the Commission to construct a new wireless telecommunications tower on North Hill in Waterbury Center on a parcel of land that abuts the Stowe town line. Verizon proposed to construct a new 88' "monopine" tower that would have provided improved wireless communications service to Waterbury Center, the Route 100 corridor through northern Waterbury, and the Moscow area of Stowe.

The Agency of Natural Resources, the Towns of Waterbury and Stowe, and several groups of neighboring landowners all intervened in the case and raised opposition to Verizon's proposed project. In its prefiled testimony, ANR argued that the project would have an undue adverse impact on a rare and irreplaceable natural area. Specifically, ANR raised concerns about the proposed tower's impact on a high-value habitat corridor that connects the Worcester Range with Mount Mansfield. ANR presented evidence on the value of this connectivity block and emphasized its importance for regional-level connectivity between the Adirondack region and northern New England and Quebec. ANR testified that this forest block is one of only nine regionally significant connectivity links for the entire northeast region. ANR, however, presented an alternate location at a lower elevation on North Hill where it argued that the tower could be located to mitigate the impact on the connectivity block. The Town of Waterbury and the neighbors argued that the proposed tower would have an undue adverse impact on aesthetics. The Town of Waterbury also argued that the proposed tower was in conflict with several provisions from Waterbury's town plan and zoning regulations.

Position of the Department

The Department presented testimony and evidence from a radiofrequency ("RF") expert who found that the proposed project could not be collocated on an existing facility. The Department also presented a report from an aesthetics expert who found that the proposed tower would not have an undue adverse impact. However, the Department recommended that the PUC deny the petition for two reasons. First, the Department supported ANR's arguments regarding the project's impact on a rare and irreplaceable natural area. Second, the Department agreed with the Town of Waterbury that Verizon had failed to demonstrate that there was "good cause" to not give "substantial deference" to the Town of Waterbury's recommendations, which is a statutory requirement under 30 V.S.A. § 248a(c)(2). In its brief, the Department argued that if the PUC issued a CPG for the project, then Verizon should be required to relocate the tower to the alternate, lower-elevation location identified by Verizon.

PUC Order

On September 21, 2017, the PUC issued a final order denying Verizon's petition. The PUC found that the proposed tower would not have an undue adverse impact on aesthetics. However, it agreed with ANR's position that the project would have an undue adverse impact on a rare and irreplaceable natural area. The PUC also agreed with the Town of Waterbury and the Department that Verizon failed to demonstrate that there was "good cause" to not give substantial deference to recommendations of the Town of Waterbury. The PUC's order emphasized that it was limited to the unique facts present in this case, and that Verizon would not be foreclosed from filing a separate application to construct a tower at the alternate location identified by ANR.

8. Commission Rule 5.100 – Net-metering Rule Change

Until January l, 2017, the Commission administered Vermont's net-metering program pursuant to 30 V.S.A. § 2l9a (enacted in 1998), together with former Commission Rule 5.100 (promulgated in 2001). Pursuant to Act 99 of 2014, the Commission revised the net-metering program by significantly amending Commission Rule 5.100. 2014, No. 99 (Adj. Sess.), § 5(d) ("Act 99"). Some of the important changes to the Rule include: ground-mounted solar projects over 150 kW in capacity can only be constructed on "preferred sites"; adjustor schedules are included; preferred site classifications are modified; additional state agencies are included as noticed parties; and non-bypassable charges are no longer offset by excess generation.

Pursuant to Act 99, on January 20, 2017, the Commission delivered a Report to the Vermont General Assembly on the revised Net-Metering Program. The Report, which accompanied the final proposed Rule 5.100, described the rulemaking process, and provided detailed background on Vermont's net-metering program. The Report noted some of the Commission's broad policy objectives, including: fostering economic development through retention of environmental attributes of net metering projects; protecting consumers and ratepayers from economic pitfalls of the associated costs of small and medium solar development; increasing beneficial siting thorough positive rate adjustors; using negative adjustors to insure RECs contribute to in- state renewable generation goals and lower greenhouse gas emissions; and facilitating greater stakeholder participation in the review of net-metered projects.

The Department participated throughout the rulemaking process and ultimately filed seven separate sets of comments. These comments included concerns about:

- Facilitating stakeholder involvement prior to rulemaking;
- Rate structure;
- Siting;
- Commission approval of project changes post issuance of CPG;
- Incentives and subsequent modification outside of formal rulemaking;
- Adjustors;
- Pacing;
- Grid fees;

- Data tracking;
- Caps; and
- Interconnection.

The revisions to Rule 5.100 were necessary to mitigate the economic impacts of net-metering on non-participating ratepayers, while appropriately pacing renewable generation development to meet Vermont's goals under the Comprehensive Energy Plan.

9. CPG #16-0069-NMP - Stowe Cady Hill Solar, LLC- 496 kW Solar Group Net-Metered Facility in Stowe

This case involves an application filed by Stowe Cady Hill Solar, LLC ("Cady Hill" or "Applicant") under 30 V.S.A. §§ 219a and 248 and former Commission Rule 5.100 for a certificate of public good to construct a 496 kilowatt (kW) photovoltaic group net-metering system in Stowe, Vermont. After the mandatory advance notice period, Cady Hill filed a net-metering application with the Commission on the last business day of 2016—the very last day an application could be filed under the now-defunct version of Commission Rule 5.100 which formerly governed Vermont's net-metering program.

According to Applicant, due to a clerical error, Applicant did not provide the Rule 5.110(C) notice of the application to all adjoining landowners. One adjoining landowner notified the Commission that he had not received the application. Applicant promptly sent via email a copy of the notice it sent the other adjoining landowners on the day the application was filed and provided a hardcopy of the application to the complainant.

The Department filed a comment letter on January 20, 2017, which identified several filing deficiencies that could render this Petition "incomplete" and, thus, subject to review under the new Rule 5.100. Several other adjoining landowners, the Town of Stowe, and the Town of Stowe Electrical Department moved to intervene and dismiss the application. On April 6, 2017, the Commission issued an order dismissing the application as incomplete with leave for Appellant to refile under the new net-metering program. On April 21, 2017, Appellant filed a motion for enlargement and to alter or amend the judgment under V.R.C.P. 59(e), or in the alternative, relief from judgment under V.R.C.P. 60(b). Appellant's motion was filed one day after the filing deadline prescribed by V.R.C.P. 59(e). The Commission denied the motion as untimely, but exercised continuing jurisdiction over the case to correct an error in its decision—

requiring that *notice* of the application filing is required under Rule 5.110(C), not a copy of the application—and articulating its rationale for dismissal in this case. The dismissal was appealed to the Vermont Supreme Court. The issue on appeal is whether the Commission erred in ruling that Appellant's December 30, 2016 application failed to satisfy the procedural requisites of the former net-metering rule. The case was argued to the full Court on October 11, 2017 and is awaiting a decision.

The Department's Argument on Appeal

The Department argued in favor of affirming the Commission's decision to dismiss the application. The application was incomplete on the date of filing in December of 2016. The net-metering rule change that took place on January 1, 2017 created a unique circumstance that altered the way the Commission processes incomplete applications. Although historically the Commission has issued incomplete determinations such as the one in this case while also often allowing an opportunity to cure, the Commission declined to exercise its discretion to offer an opportunity to cure during the transition to the new net-metering program. To allow such a cure would have altered the Commission's treatment of an application as *complete* on the date the last curative filing is made. If the Commission received such a curative filing after January 1, 2017, the application would be deemed received after January 1, 2017 and thus would fall under the new net-metering program that took effect on that date. Appellant's decision to file on December 30, 2017 was intentional and risked exactly the result that has occurred in this case, namely, the dismissal of the application on grounds of insufficiency.

On appeal, Cady Hill asserts: (1) the application substantially complied with the Commission rules; (2) the notice defect in the filing was promptly cured and caused no party prejudice; (3) the dismissal was untimely; and (4) the Commission should have found good cause to waive the notice requirement. If accepted by the Supreme Court, Cady Hill's arguments would constrain the Commission's authority and substantially reduce its ability to manage a programmatic rule transition in an orderly fashion. The Commission necessarily had to make determinations about end-of-2016 cases where an application was insufficient under the old net-metering program rule.

Conclusion

As previously stated, Title 30 tasks the Department with policy, planning and regulatory functions. As shown by our advocacy and leadership in exploring alternative regulation, policy and planning frequently is the foundation for our regulatory role. This past year the Department has been particularly mindful of considering how our regulatory stance may promote economic development, enhance affordability and protect the most vulnerable among us. In addition, we aim to advocate in a manner that is respectful of the will of the community. We believe the Verizon wireless tower case is a good example of how our advocacy has balanced economic development with respecting the will of the community – and working collaboratively across state agencies.

We are at all times mindful of our role as ratepayer advocates and this past year has seen many hours invested in both rate cases and proceedings regarding the basics of rate regulation more generically. We look forward to continuing these discussions.